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Dear Sir/Madam

City of London Law Society Training Committee Response to the SRA's Consultation on Assessing Competence

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response to the consultation has been prepared by the CLLS Training Committee.

General Remarks

The Consultation is far ranging and not confined to the SQE itself. It is the culmination, so far, of the SRA's proposed introduction of the most far reaching reforms of the solicitors' qualification process in modern times. The questions asked in the Consultation provide no opportunity to enter the debate about the validity of and need for these reforms on a general level. We believe that it is vital that stakeholders participate in this way and so we propose to make some general observations on these reforms before responding to the individual questions. We believe that it is all the more vital for us to do so as (a) City law firms already account for a very large proportion of all training contracts and (b) it is proposed that, under

these reforms, employers of intending solicitors play an even more pivotal role in the qualification journey than they do now.

We find that our hands are tied because the Consultation contains little more than skeleton proposals which do not allow us to reply definitively with the level of detail warranted by such a major shake-up of the way that the entire solicitors' profession qualifies. From this point of view the Consultation is disappointing. It asks us to respond to a model for assessment which, in terms of the SQE itself, is not adequately formulated, nor one which demonstrates to us that the requisite high standards will be maintained, and where consideration of some of the most fundamental features is put off to another day, for example, pre-qualification workplace experience and graduate or graduate level entry or other pre-entry requirements.

In short, the drip feed realisation of the reforms does not give us (or other stakeholders) the opportunity of properly considering the reforms as a whole. As the proposals in the Consultation are far from definitive, we do not believe that the SRA should be reaching any final conclusions at this stage on the merits or otherwise of these proposals, let alone the implementation of the detail. Once the complete framework of the reforms as a whole and the detailed proposals for their implementation have been formulated in their entirety, then is the time to make the decisions. To do so any sooner risks catapulting the profession down a radical pathway that fails to achieve the objectives of a better system of qualification in the interests of greater consumer protection and damages the credibility and reputation of solicitors.

We will be dealing with many of the specific aspects of the proposals later in this response as part of our replies to the Consultation questions but as an overview, we have a number of general observations to make.

Standards

It is absolutely crucial that standards are not lowered. It is essential that quality and standards are at the heart of any new qualification requirements. In relation to the SQE itself, we have very serious reservations about the suitability of multiple choice questions to test skills and abilities such as analytical thinking and structuring arguments and also doubt that simulated exercises will be able to fully and robustly examine students and so maintain standards.

It is also crucial that standards are not perceived to have been lowered. The solicitors' profession in England and Wales would stand out as a profession which is not based unequivocally on a graduate or graduate level education.

The international picture

We envisage potential damage to the international credibility of the solicitors' qualification and the global standing of solicitors if sophisticated consumers of legal services around the world, who make up the client base of City law firms, do not recognise these proposed qualification requirements to be of equivalent status. We share the concerns and support the views expressed in the Law Society's Global Competitiveness of the England and Wales Solicitor Qualification in July 2015 on these issues.

English law plays a major role in a highly competitive legal market. The fears that have already been expressed to the effect that the reforms to the qualification process for solicitors

could undermine the pre-eminence of English law as the governing law in international transactions are, we believe, accentuated by what is in the Consultation. Any lessening of the pre-eminence of English law would have political and economic repercussions which should be of concern to the SRA as a regulator, when its objectives are to encourage a strong and effective legal profession and to promote the public interest. This should not therefore be dismissed as mere scaremongering.

Cost considerations

One of the arguments put forward in the Consultation is that the proposed new approach to qualification via the SQE will be cheaper and open up opportunities for those currently unable to afford to become solicitors. There is no evidence in the Consultation nor, as far as we are aware, elsewhere to support this argument. Nor can there be at this stage, as the proposals need to be developed significantly before costs can be quantified.

In any event, a major concern is that new courses are likely to emerge that are driven more by cost and the imperative of getting students through the SQE than by giving them the wider base in the law and analytical thinking that the current system now does. Such courses are a feature of other jurisdictions with a single examination regime, for example the US and Japan. This would be to the detriment of the overall legal knowledge and problem solving capabilities that solicitors should have on qualifying and need in the interests of protecting consumers of legal services.

Often cost-saving arguments are not absolute savings but cost-shifting exercises. Our member firms are concerned at the increased burden they are likely to be obliged to shoulder. This does not just include direct costs. In particular, we believe that little or no thought has been given to the disruption to firms' businesses and to clients and the wider cost implications for firms, of either (a) requiring solicitors to have workplace experience in areas that are either peripheral to, or not part of, the practices of those firms or (b) more generally, imposing a set of qualification requirements that do not allow for intending solicitors, as under the current training contract, to develop their skills and integrate themselves within their firms prior to qualification through an uninterrupted period of "on the job" training and close supervision and mentoring.

The training provider market

It is by any measure a fairly startling proposition to propose that in relation to a professional qualification, there will be an entirely unregulated training provider market based on the notion that it gives freedom to the training providers to be more flexible and innovative which will drive down costs. It dictates that the market, or part of it, will be driven by the cheapest way to get students through the SQE and the emergence of crammers or "teaching to the test". The economic impact report points out that creating new flexible pathways to qualification does not guarantee their success, leaving of course the students themselves most at risk. We believe that the lack of prescribed routes to qualification is likely to impact negatively on those it is seeking to help – ie those who do not have access to good advice and information relating to the realities of the choices they make (particularly the early choices) on their future career options.

The SQE

As to the SQE itself, the focus of the proposed qualification requirements is the SQE. In fact, there is no certainty that there will be anything else. Everything hinges on the SQE. The SQE must therefore be better than the examination system we have now: better in terms of quality assurance; better coverage of the areas of legal knowledge which are relevant for lawyers qualifying in the modern world; better consistency in testing; and better for breaking down social and diversity barriers and widening access to the profession. We do not believe the SQE does this and will be taking each of these issues in turn further in this response.

Conclusions

Our comments in this response are not about protectionism or maintaining the status quo, and we would support change where what is proposed is better than what it replaces. In our response to the SRA's earlier consultation on a Competence Statement for Solicitors, we referred to the conclusion reached in the Legal Education and Training Review of July 2013, which was that the current LSET system provides, for the most part, a good standard of education and training. However, the proposals in the Consultation are built on a premise that everything needs to be changed. Yet, the alternative approach, which is to build on and improve the current system, has been dismissed by the SRA without putting forward a fully stated case for doing so and without a formal consultation with stakeholders. This may require more regulation and supervision by the SRA but this is not a reason not to explore this. The objectives in paragraph 10 of the Consultation focus on securing the most effective regulatory effort; reducing the SRA's role is not an objective.

Until our fundamental objections as outlined in this response are addressed, we are unable to support these proposals. We believe that there is room to meet the SRA's concerns, especially about consistency in standards, by making improvements to the current system.

Question 1

Do you agree that the introduction of the SQE, a common professional assessment for all intending solicitors, best meets the objectives set out in paragraph 10?

No.

The first objective refers to consistency and comparable high standards across pathways to qualification. It is axiomatic that requiring all intending solicitors to sit a common professional assessment will provide consistency in the standard of assessment, but we do not believe that the SQE in the form outlined achieves the objectives set out in the Consultation. As will be clear in the response to Question 2, we are not persuaded that the SQE will be capable of ensuring the high quality of education and training which is needed at the point of admission to the profession. Consistent and comparable minimum standards (elsewhere referred to as a stated objective of the SRA) are not the same as high quality standards.

Some form of standard centralised assessment could be beneficial but in our view, it would be better to incorporate it by changes within the existing qualification model.

Consistency

The SRA will in practical terms be assessing intending solicitors in a role which no longer exists, at least not for the majority of current practising solicitors. We therefore question its validity, in conceptual terms, as a way of assessing competence of role-readiness. The practice of law has over the years become increasingly complex, specialised and diverse, even pre-qualification. This change is not reflected in the subject areas of the SQE. The almost exclusive emphasis in Part 2 on the reserved activities, channelling all intending solicitors through the same reserved activities' assessment (with some allowance in the election of contexts in Part 2), is a backward step. Therefore, the SRA's proposal to sheep-dip solicitors through this process runs counter to the realities of the practice of solicitors now and the direction in which the profession is heading into the future. Consistency in the wrong areas of law cannot be a satisfactory regulatory objective.

The Consultation cites the 2015 Framework for Higher Education Qualification (HEFCE) consultation on standards and quality in Higher Education to support its argument relating to inconsistency in standards, but the consultation was across all subjects and not just law and was for the purpose of considering what kinds of quality assessment arrangements would be necessary through to 2025. Its conclusions cannot be used as a basis for not pursuing the LETR recommendations that more should be done to set standards across education providers. The SRA has the opportunity to do so with the GDL and LPC.

Looking at the inconsistency argument in its broadest terms, any inconsistencies in standards between university degrees cannot be unique to the UK and yet it is hard to find any major jurisdiction (whether under the civil law or common law) that does not require a degree to qualify as a lawyer.

The Consultation also looks at inconsistency at the LPC level referring to the 26 different providers and the varying pass rates. However, the economic evaluation report points out that two leading providers together account for around 70% of students. Further, it is with the SRA's blessing that a variety of LPC courses are now offered, with some accelerated and some focused, for example, on skills needed for City firms. See further below. It is no surprise that this results in differing pass rates. The analysis of why this is and more importantly, whether it reflects a genuine problem, has not been done. It would seem to be feasible to introduce an element of standardisation and improve consistency within the current system, but this does not seem to be a direction that the SRA wants to go.

In relation to consistency and validity of the assessment, we note the following quote from the AlphaPlus report "How stakeholder views are taken on board and responded to will also be important". We cannot overstate this – listening to practitioners has not only to be seen to be done, but also done.

Comparable high quality standards

Much work has been done in recent years by CLLS member firms to improve aspects of the current qualification process, largely through working with the LPC providers to improve the LPC in relation to the topics covered and in the methods of study. This work has ensured that the LPC continues to keep pace with the changes in the legal services market. The quality of the trainee contract in City firms is also high. We are therefore confident in the standard of education and training provided by City firms during the vocational stage and consider that

they demonstrate that the current model can be a good one and with improvements to some aspects, the current model is to be preferred.

Ensuring that the most talented candidates can qualify as a solicitor

This is the second of the SRA's stated objectives and is to be achieved by encouraging the development of new and diverse pathways to qualification which are responsive to the changing legal services market and which remove artificial and unjustifiable barriers.

First, we agree with the observation in the economic impact report that offering new flexible pathways to qualification does not guarantee their success. We also see a danger for students under a regime that does not prescribe the routes to qualification. It will disadvantage those who are less well informed on the impact of choices on later career options. It will force some students to make their career choices early and before they might otherwise want to. Greater choice of pathways may close down career options to students depending on which pathway they choose. For example, as a non-graduate, the Bar would no longer be an option and joining a City firm may well be much harder.

With a unregulated training provider market, it may be difficult for students to make valid comparisons between providers. Shorter crammer style or "teach to the test" courses may indeed result in a pass on the SQE, but may not open up career options if the preference of employers is for a higher quality training.

The Consultation makes the point that the cost of qualification is a barrier to becoming a solicitor. It provides no evidence on the extent that cost is a barrier to entry and it provides no evidence that the new requirements to qualification will be cheaper. Indeed, the economic impact report is unable to conclude unambiguously that the new approach would lead to lower average costs of qualification. The case for saying that the new system will be cheaper is not proven.

The SRA considers that access to training contracts is a further barrier to entry. Subject to the caveat that there is insufficient detail available to be conclusive, concern has been expressed that a consequence of increasing the financial and organisational burden on firms might actually lead to a reduction in the number of trainees taken. Alternatively, to minimise any additional burdens, recruitment could well continue as now for many member firms and therefore will not widen access.

We cover other diversity implications in our response to Question 17.

Question 2

Do you agree that the proposed model assessment for the SQE described in paragraphs 38 to 45 and in Annex 5 will provide an effective test of the competencies needed to be a solicitor?

No.

Without the key component of the SQE model, which is the assessment framework, there is insufficient information to comment in detail, but we are able to comment on the important points of principle.

The SQE model

Part 1 of the SQE covers the knowledge equivalent to the Foundation subjects of a law degree/ GDL, plus the other compulsory subjects that are currently taught on the LPC. As pointed out in our response to Question 1, Part 2 focuses on the reserved activities (plus the law of organisations). All other subjects in the electives of the LPC would be lost. To a greater or lesser degree the reserved activities are no longer relevant to many law firms or other providers of legal services and yet, in addition to being covered in Part 1, they are singled out for Part 2. They do not, any more, represent the education and training that many solicitors need to have to practise. This approach does not seem consistent with what should be one of the main aims of any new qualification - that of testing the competence of intending solicitors in relevant areas of legal practice and therefore better protecting consumers, as opposed to slavish adherence to disproportionate regulation of reserved activities.

As City firms:

- We do not support the proposal of a "one route" assessment. Several years ago, the SRA allowed greater flexibility for firms to tailor LPC courses to provide intending solicitors with the early stage vocational training which would be more relevant preparation for practice. Now requiring all intending solicitors to undergo the same assessment is counter-productive.
- Removing the LPC stage 2 vocational electives from the qualification process plays very badly for many non-general firms (or at least those whose practices do not match the elements contained in the proposed Part 2) – it will affect City firms to a disproportionate degree. Our member firms will be employing intending solicitors who will gain no SRA qualification credit or advantage for studying the current LPC electives which prepare them for practice in those firms. We regard the LPC electives which have been developed over the last decade as essential for City practice, covering as they do, such elements as corporate transactions, debt finance and equity finance. The current proposal effectively denies City firms the opportunity to provide their future trainees with the training they need to perform competently and successfully in the role. The elements covered in the LPC electives will need to be undertaken separately and additionally and with the consequential additional costs.

We are not confident that the proposed "two or three assessment" methodology (for Parts 1 and 2) will provide an effective test. Several educational specialists point to the necessity for multi-assessment methodologies to be deployed to maximise test accuracy, particularly in relation to high-stakes events such as qualification into a profession. The AlphaPlus report concludes that a range of assessment methods should be incorporated into the assessment process and also talks to the risk of placing too great a burden on a single assessment process.

Yet Part 1 which is the essential legal knowledge test is to be a single (but modular) test examined on a multiple choice basis. It cannot be right that the knowledge test is based exclusively on this one method.

We have grave reservations based on what we read in the Consultation that the Part 1 multiple choice questions (MCQs) will be effective. This is because:

- MCQs are quantitative not qualitative. Comparative studies on the use of MCQs in medical sciences, dentistry and accountancy does not necessarily mean it is the right

assessment methodology in law. We need to have qualitative questions in law to examine at a deeper level and to be able to differentiate between candidates.

- MCQs do not assess written communication skills, English language skills, unprompted recall of information, thought process, complex problem-solving ability, high-level analytical skills, evidence-gathering ability, the exercise of judgment and the ability to write convincing arguments.

In principle, we would expect the SQE to test at least to the depth and breadth of the existing requirements, because there is no suggestion that the existing knowledge requirements are too rigorous. However, we have yet to see the evidence. The duration of testing for Part 1 appears to be substantially less than the duration of testing carried out for the GDL. If the testing is less, then the syllabus (not yet specified) will inevitably be tested in less breadth and depth.

As practitioners and not academics or educationalists, it is more difficult for us to comment on the technical aspects of the proposed assessment. We have though noted that the AlphaPlus report validates the concept of multiple choice testing, but not by reference to the proposed solicitors' competence framework. Furthermore, it is not clear that when used in other professional qualifications, this form of assessment is used alone as the sole method of assessing of functioning knowledge and in a situation where there are also no pre-entry requirements to taking the assessment. The report refers to comparative case studies having been carried out (qualifying as an attorney in New York and as a solicitor in New South Wales) but there is no reference to any findings from these case studies, which might have been instructive.

We have observed that AlphaPlus are insufficiently confident in their conclusions on the validity and reliability of the SQE to the extent that they recommend a safeguard, namely a relevant degree, specifically for the purposes of demonstrating high level academic skills in essay writing and critical thinking. The omission of any testing of these abilities also goes to the very core of our concern with the SQE assessment proposals. If there is no testing of them, there need not be any learning of them to pass the SQE.

Quality assurance must also come in the form of proper benchmarking of standards. The Consultation says that the assessments will be set at graduate level and yet there is no undergraduate pinning of a degree level course, whether it takes the form of an undergraduate degree, or graduate equivalent such as a CILEx or trailblazer apprenticeship qualification. The Consultation also says that it is not appropriate to benchmark the SQE directly to the degree level descriptors set by FHEQ. Therefore, it appears to be saying that it will be at graduate level but not actually using the graduate level criteria and that it will not grant exemptions for law graduates even though the SQE is to be at graduate level. We are unable to follow the logic here.

A single modular multiple test assessment is very far removed from the examinations which make up a typical degree. We are not sure how it is possible to reconcile the SQE with degree equivalence and it is certainly not clear from the Consultation.

We agree that Part 1 should be required to be passed before Part 2.

The pass or fail model

A pass/fail model will not be robust as it will not identify stronger candidates eg those with higher-level analytical skills (who will make for better solicitors). Our member firms are unpersuaded that the complexity and challenges involved in providing a graded assessment is sufficient reason not to offer a graded model.

An absence of grading of the SQE means that candidates cannot demonstrate higher abilities and does not encourage higher achievement. The standards set by training providers may not be as high if all that is required from their students is a simple pass or fail. Employers cannot use the SQE as a measure of choosing the most able solicitors and so will use other evidence of achievement such as good degrees, which is counter-productive on diversity grounds. It will disadvantage candidates without a degree the most and might hit those from more modest backgrounds the hardest.

Unlimited re-sits

An unlimited re-sit policy will not properly assess for true competence as it increases the chances of a candidate passing through other means, such as learning from previous sitters, studying mark schemes, memorising and demonstrating superficially convincing behaviours. The AlphaPlus report talks to the challenges involved in creating an "item bank" of MCTs, for example, sufficiently wide to protect against this and states that an unlimited re-sit policy should only be offered if the items banks are of the requisite size. It also speaks to the additional pressure that would be placed on an already demanding system. We would be interested to hear the SRA's plans relating to this bearing in mind its other statements relating to the increased complexity and costs involved in extending out the Part 2 contexts or in providing assessment gradings.

An unlimited re-sit policy lacks academic credibility and is also at odds with the re-sit policy of undergraduate and graduate degrees (which have on average a two re-sit policy).

We would have thought that the provision of an unlimited number of re-sits of itself brings the issue of consistency into question. Some candidates would be able to fund several re-sits, whereas others will not be able to. For our member firms, quality concerns are definitely raised if a solicitor is not able to pass on the first two to three attempts. There are also reputational risks for the profession.

In summary, we find the unlimited re-sit proposal counter-intuitive to the stated objectives of consistency, quality and diversity.

Question 3

Do you agree that all intending solicitors, including solicitor apprentices and lawyers qualified in another jurisdiction, should be required to pass the SQE to qualify and that there should be no exemptions beyond those required by EU legislation, or as part of transitional arrangements?

We believe that exemptions should apply for those who have completed an English qualifying law degree, to avoid duplication in terms of students' time and the cost of having to prepare for and sit two sets of examinations in the same area (with their educational provider and the SQE). We do not understand how the proposals can outline a SQE at graduate level or equivalent if they do not allow exemptions for those with an English qualifying law degree.

There are other possible examples where a no exemptions rule would appear to be unjustifiable and that is in relation to those qualifying in Scotland and in relation to barristers.

During transition, we believe that exemptions should also apply for those who have completed the GDL and/or LPC.

For non-UK lawyers, our member firms in general feel there should be no exemptions beyond those required by EU law.

Question 4

With which of the stated options do you agree and why:

a) **offering a choice of 5 assessment contexts in Part 2, those aligned to the reserved activities, with the addition of the law of organisations?**

b) **offering a broader number of contexts for the Part 2 assessment for candidates to choose from?**

c) **focusing the Part 2 assessment on the reserved activities but recognising the different legal areas in which these apply?**

Our preference is for Option (b).

We do not agree with Option (a) because many City law firms do not operate in even three areas of reserved activity and many do not have contentious practices. They would be unable to offer experience in three of the five contexts.

There is an assumption in the Consultation that experience is likely to help students pass Part 2, but the five contexts are so broad that it is by no means certain that any experience they get from firms within each context will be sufficient to cover that breadth.

If Part 2 assessments are required to be taken at the end of the period of workplace experience in contexts in which firms do not practise, trainees will need to regain legal knowledge not used since their Part 1 examinations. In this situation we envisage that firms would provide support to their trainees by sending them on external courses. This would represent an additional cost to firms (both in cash terms and in terms of time their trainees are away from the office). This would be likely to give rise to a new industry of "crammers", providing little real value to the experience of the trainee. The proposals suggest that experience in the assessed contexts would help the candidate to pass the assessment - in which case, is this fair to those candidates who cannot get access to that experience? If Part 2 is to come at the end of the training contract, City law firms feel that there should be enough contexts to ensure that trainees are being examined in a relevant area.

Option (c) would not, in practice, be much more workable for City law firms than Option (a). Option (c) would also require trainees to regain legal knowledge not used during their work experience and would also mean that firms would need to send trainees out on external courses.

Given that approximately half of all training contracts are currently undertaken with City law firms, it is important to the firms we represent that any new training regime can be operated within the contexts of the businesses of those firms. We note that the SRA indicates that it does not favour Option (b) because this option would be more expensive to administer and less consistent and would mean that the assessment was less clearly focused on the reserved activities. These concerns should not take precedence over the need to structure the SQE in a way which reflects so much of modern practice today and in a way which firms can accommodate.

Since we see the current choice of contexts as misconceived, our member firms would, we believe, be willing to help put together a list of contexts which would be common to most City law firms if Option (b) were to be adopted.

Options (a) and (c) again bring up the issue of the focus on the reserved activities. Legal knowledge for the reserved activities will be examined in the Part 1 assessment. The Part 2 assessment is designed to assess candidates' competence in six professional skills (interviewing and advising, advocacy/oral presentation, negotiation, writing, drafting and legal research). We do not see that Part 2 needs to examine these skills in the context of the reserved activities; this is not necessary in order to ensure that candidates can demonstrate that they have the skills to practise as a solicitor. We believe that Part 2 should examine these skills in the context of the legal practice areas (reserved or not) in which candidates work. It is anomalous to limit the contexts in which candidates' skills to practise are tested to areas in which many firms no longer practise. Adding the law of organisations to the reserved activities (in Option (a)) does not go far enough to enable many City firms to give trainees experience in three relevant contexts.

Offering a broader number of contexts for Part 2 would make it more likely that a wider range of pre-qualification workplace experience could be relied on to prepare candidates for Part 2 (a possibility mooted in the Consultation). If Part 2 contexts are predominantly the reserved activities, workplace experience for Part 2 will have to be gained mainly in traditional law firms, which in turn will mean that there will not be a significantly wider range of workplace experience.

Question 5

Do you agree that the standard for qualification as a solicitor, which will be assessed through the SQE, should be set at least at graduate level or equivalent?

Our member firms generally feel that the standard for qualification should be set at a level equivalent to that currently reached by trainees on qualification (which is level 7 in the FHEQ, plus two years of work experience). We also feel that the various stages of the SQE (Part 1 and 2 and any required work experience) should be mapped to the highest standard currently required in the qualification process (that is to say that Part 1 should be set at least at FHEQ 6) and that this mapping should be done in the most transparent way possible, by, for example, using the FHEQ.

Graduate level requires important skills such as analysis and close reading. As we have observed in other responses to these questions, these skills are essential requirements for practice. If the new system is intended to be a more robust and consistent test than the current postgraduate LPC and training contract route, then it follows that the test must be of at least the equivalent level.

This is in line with other professions (nursing, physiotherapy, accountancy, engineering, etc). The new trailblazer solicitor apprenticeship is also set at level 7.

Failure to set an equivalent standard to the current standards or an inability to demonstrate that a high standard has been set risks undermining the credibility of the solicitor qualification both in the international arena and in the local market. See also our response to Question 14.

Question 6

Do you agree that we should continue to require some form of pre-qualification workplace experience?

Yes.

A period of pre-qualification workplace training is a crucial part of the training process for all intending solicitors. Additionally, we are told there are elements of the Statement of Solicitor Competence which cannot be validly and reliably assessed in any way other than via workplace experience over a period of time.

Workplace experience is essential to the development and application of learnt knowledge and skills and provides the trainee solicitor the opportunity to develop these still further within a working environment. Indisputably, this is where much of the real learning is done, where neat black letter law meets the messy reality of clients, courts, real time decision making and real opponents and where trainees have the opportunity for guided learning in a relatively safe environment. One only needs to assess a trainee's competence at the beginning and at the end of such experience to appreciate the benefits that this testing of their mettle brings. Even students with the strongest academic backgrounds require this time to adjust to the considerable demands of practice.

The knowledge that trainees have been through a period of supervised "on the job" training means that clients and consumers of legal services can have greater confidence in the quality of their solicitor and know the standard that can be expected of them.

Workplace experience is a validated method of ensuring quality which is used extensively in most if not all other professions (eg accountancy, medicine and dentistry).

Such a period of workplace experience is also crucial in maintaining the international standing of the solicitor qualification and helps to address questions about the robustness of the English qualification from other countries' regulators.

We understand the SRA's current position is that some form of pre-qualification workplace experience is likely to be maintained, as advocated in the AlphaPlus report, and we cannot overstate our support of its retention – it is an essential, for us non-negotiable, element of the qualification process. However, we strongly believe it should remain in its present form without any significant downgrading in the breadth of experience trainees are required to obtain or length of pre-qualification experience required before admission. The workplace experience system serves our firms, trainees, solicitors and clients well and should be allowed to do so.

Question 7

Do you consider it necessary for the SRA to specify a minimum time period of pre-qualification workplace experience for candidates?

Yes.

It is essential that the SRA imposes a minimum time period of pre-qualification experience for candidates. This is essential for the maintenance of standards and the protection of consumers of legal services.

Member firms who employ overseas qualified lawyers from jurisdictions with a single examination regime have commented on the lack of work based experience those overseas

qualified lawyers have on qualification. It is very clear that short periods of internship produce lawyers who are neither socialised to an office environment nor capable of working effectively within teams or as commercial advisers to their clients at the level and standard we expect of newly qualified lawyers. Consequently, some firms insist on those newly qualified overseas lawyers making-up the missing period of training.

An unspecified period is unsafe. It would mean that trainees could do the minimum required to pass Part 2. Since the Part 2 contexts are not necessarily those in which solicitors practise on qualification, there is a risk that many of them will qualify into practice without relevant experience. The absence of a minimum industry standard, would exacerbate any inconsistency in the experience of newly qualified solicitors. This inconsistency between firms would make the comparison between candidates in the recruitment process more difficult. Those with a shorter period of workplace experience may be disadvantaged upon qualification compared to those with a longer period. Such inconsistency would in fact contradict the SRA's stated objective of assuring consistent standards across the profession.

There would also be an inherent danger that there would be "a race to the bottom" as firms compete for trainees and are forced, either as a result of financial pressures or in a bid to attract the best candidates, to sign off as soon as possible. This could mean that firms stipulating a longer period of pre-qualification experience could have a smaller pool of people from which to recruit - ironically, those firms requiring higher standards of competence from its solicitors could be penalised.

Without having an understanding of how the assessment framework will work in practice, it is very difficult to recommend anything other than the retention of the two year period which is so fundamental in the current process of training solicitors.

The majority of our member firms are in favour of retaining the well-established and proven period of two years pre-qualification workplace experience. In our opinion, this is the optimum period of time for intending solicitors to be able to experience a sufficient variety of practice areas to become credible practitioners in their own right. Any shorter period would have a significant impact on the experience gained. This will be even more so for trainees who might otherwise have the opportunity to undertake the valuable experience of an overseas or client secondment during that period, as is commonly the case in our member firms.

Importantly, it would also make it more difficult for firms properly to assess the competence of trainees and for individuals to make a considered decision about their specialism.

Perhaps more importantly, a shorter period would inevitably result in trainees gaining less experience within practice areas. It is this ability to see problems within the wider legal context and to assess the impact of other areas that distinguishes the student from the practitioner.

Question 8

Should the SRA specify the competences to be met during pre-qualification workplace experience instead of specifying a minimum time period?

No.

We assume that this question envisages competences being specified by the SRA for stages during the pre-qualification workplace experience that would build up to the Threshold Standard in the Solicitors Competence Statement. If this is the suggestion, we do not

consider that it is necessary or desirable: it will be sufficient for candidates to be assessed (in the way eventually adopted) by reference to the Threshold Standard at the end of the period.

The reasons for setting a compulsory pre-qualification time period have been set out in response to Question 7. However, there is no reason why a time period and the competences to be achieved at the end of it are mutually exclusive. Any model designed to ensure consistency of quality of newly qualified solicitors across the many different types of practices from which they emerge: small, medium and large firms, in-house whether it be industry or local government etc, must impose a uniform standard on these practices to enable each to judge the quality of the end product by reference to the same. A poorly designed, "pick and mix" or worse, a "suit yourselves" approach will inevitably lead to poorly trained solicitors and a two or even three tier profession.

The benefit of specifying a minimum time period in addition to the requirement to meet the Threshold Standard is that intending solicitors would have their competences tested over a period of time, giving a better indication of the consistency of standards, the achievement of which is one of the SRA's stated objectives.

Question 9

Do you agree that we should recognise a wider range of pre-qualification workplace experience, including experience obtained during a degree programme, or with a range of employers?

We support widening access to the profession and recognise that the current system could work more effectively for entrants from a diverse range of backgrounds. We would like to see this improved.

We support the development of the trailblazer apprenticeship and our member firms actively engage in a range of high quality initiatives and programmes designed to widen access to the profession.

In principle, we are in favour of the SRA recognising a wider range of pre-qualification workplace experience, including experience obtained during a degree programme or with a range of employers. However, the devil will be in the detail. It is essential that any such experience is monitored and accredited as being of the necessary equivalent high standard. Without this support and supervision, there is a real risk that the experience will lack cohesion and rigour and will not provide appropriate development opportunities for the candidate (and which is equivalent to that obtained by the current route). This would be of concern for the quality of the profession and for the protection of consumers of legal services.

Work experience gained at undergraduate level (or equivalent) might be feasible but it would need to be built on by higher level experience if it were to replicate the quality of the experience that trainees have today. The benefits of allowing this would have to be weighed against the much greater practical difficulties of ensuring that it is of the same quality of experience of trainees today. It might require a maximum allowable at this early stage so that significant experience remains gained at postgraduate level.

We also note that undertaking work experience (unless paid) during term-time or during vacations could have a disproportionately negative effect on individuals from less privileged backgrounds.

The specified competencies and the maintenance of a minimum period would become of even greater importance than currently for candidates who have obtained their experience in this way.

Question 10

Do you consider that including an element of workplace assessment will enhance the quality of the qualification process and that this justifies the additional cost and regulatory burden?

Our members firms are already working hard to provide significant training and development for their trainees. This is seen as an essential part of the development of junior lawyers (and indeed this emphasis on continuing professional development is maintained throughout legal careers).

If, as the Consultation suggests, not all of the competencies in the Statement of Solicitor Competence can be assessed within the SQE, then there is a case for some form of workplace assessment at least to the extent necessary to assess those competencies. We would need to see further detail from the SRA as to what is proposed. For example, would this be through some form of training delivered by supervisors? Or through the development of trainee portfolios? Or in some other way?

For assessment to be workable, it must be reasonable and proportionate, both in terms of the length of time it takes and the attendant expense. Firms have noted that the cost is likely to be significant. As we indicated in the General Remarks in this response, we believe that little or no thought has been given to the disruption to firms' businesses and to clients, and the wider cost implications for firms. This merits repeating as it is a matter of some considerable concern to our member firms.

These concerns and the financial and organisational burdens would be felt most acutely by firms which do not have budgets for increased training and human resources and the real cost could be considerable for large City firms with large numbers of trainees. If the burden is too great, it may lead to a reduction in trainee numbers or a shift to firms using more paralegals and other less qualified staff. This could reduce opportunities at a range of firms which in turn might damage the breadth of experience available and not promote diversity.

Question 11

If you are an employer, do you feel you would have the expertise to enable you to assess trainee solicitors' competences, not capable of assessment in Part 1 and Part 2, to a specified performance standard?

Yes.

The City firms generally already have established education and training teams of significant size and competency, we believe that they would be able to assess trainee solicitors' competencies to a specified performance standard. This is what City law firms already do in order to assess, and manage, trainee solicitors through to qualification.

We believe that our member firms between them contain a significant proportion of the learning and development professionals operating today within law firms in England and Wales and, consequently, we should have a high regard for their views. Their views on the present system are eloquently represented by one member firm's comment that:

"*Firms like ours already operate a robust training contract assessment process – whatever is introduced should recognise that and not simply impose another administrative pre-qualification burden on the firm and its people, including its intending solicitors…….[We]*

have worked hard, and continue to do so, to create a comprehensive, effective, practical and developmental period of work-based learning to nurture its intending solicitors."

Question 12

If we were to introduce workplace assessment, would a toolkit of guidance and resources be sufficient to support you to assess to the required standard? What other support might be required?

If the toolkit which is provided is sufficiently comprehensive and easily adaptable to the needs of our firms, focusing as they do on the application of the law to commercial contexts, then a toolkit might be helpful. If, however, it is generic in nature, we shall need to work with the SRA to develop a toolkit which has direct application to the work which we do.

We do not, however, have sufficient information about the SRA's proposals in order to comment on this aspect of them.

Question 13

Do you consider that the prescription or regulation of training pathways, or the specification of entry requirements for the SQE, are needed in order to:

a. **support the credibility of the assessment?,**
b. **and/or protect consumers of legal services and students at least for a transitional period?**

We believe that training pathways need to be prescribed and regulated and that entry requirements for the SQE should be imposed to support the credibility of the assessment and to protect consumers and students.

In our view a degree or degree level qualification should be set as the entry requirement.

As mentioned in responses to other questions, but for emphasis, gaining a degree (or degree level qualification) demonstrates the acquisition of academic skills such as high-level written and verbal communication skills, critical thinking and the ability to analyse and reason. These skills are essential for a competent solicitor. The SQE as proposed gives us no confidence that these skills will be tested.

Without such an entry requirement, there is a danger of a two tier profession emerging: many law firms will recruit only those with degrees or equivalent (either as trainees or later as qualified solicitors) and those who have qualified by passing the SQE without first having attained a degree level qualification will be less employable. This is exactly contrary to the SRA's aim to make the profession more accessible.

We accept that the SQE might examine at the appropriate level. The danger, in our view, is that this might not be the case or that it might not be perceived to be the case, with resulting detriment to the credibility of the assessment and loss of faith in the solicitor qualification. These are not risks worth taking. In any event, we note that there is currently insufficient detail available about the SQE tests for anyone to be able to judge whether the SQE will maintain current standards.

We are concerned that, unless training pathways are prescribed and regulated, students who are not well connected will be unable to discern which pathways are well regarded by the profession and may waste their money and time pursuing pathways which will not secure

them employment as solicitors. This will not help to make the profession more diverse but will exclude the very people the profession is trying to include. We think that the SRA should give more consideration to Options 1 and 2 from the 2014 Consultation on the Statement of Solicitor Competence.

Question 14

Do you agree that not all solicitors should be required to hold a degree?

Our member firms believe that all solicitors should hold a degree or degree equivalent qualification because:

- Successful solicitors need to have advanced rational and analytical skills - an ability to analyse, understand and synthesise large amounts of information to provide clients with nuanced, balanced and appropriately tailored advice. These skills are essential for competence and for consumer protection. They are all skills that are developed even for the most gifted students through quality academic courses and qualifications and over a period of time; and
- All other major legal jurisdictions (and most importantly, the New York Bar) and many professions in the UK (for example, teaching and nursing) require a degree or degree level qualification and against that backdrop it is hard to see how the credibility of the solicitor qualification can be maintained without this requirement.
- The new trailblazer apprenticeship standards are set at level 7 of the FHEQ, which is recognition of the need for a post-graduate level qualification to practise effectively as a solicitor. Given the emphasis on consistency of standards, it would also be anomalous to require those who are seeking to qualify via the apprenticeship route to attain level 7 and yet allow others to qualify without reaching this level.

The consequences of devaluing the solicitor qualification would be far reaching. The firms represented by the CLLS are operating in a very competitive international environment and any suggestion that the standard required to be an English solicitor has been lowered risks making English law and lawyers less attractive to international clients, who have the choice of numerous legal jurisdictions.

The SRA has mentioned elsewhere that if the SQE is set at degree or equivalent level this should be sufficient to maintain standards without the requirement that intending solicitors complete any particular academic or vocational courses or qualifications beforehand. We have noted our concern that this will result in the introduction of crammer courses and "teaching to the test" courses to pass the SQE, which will produce solicitors who are able to pass the SQE but have not developed their cognitive or rational skills or the maturity to apply them as set out above.

We note in passing that the comparative studies carried out by AlphaPlus for their report all had graduate entry requirements.

Question 15

Do you agree that we should provide candidates with information about their individual and comparative performance on the SQE?

This raises the issue of grading results on the SQE or providing percentages. Our member firms want to see grading of SQE results rather than pass or fail. Grading of the SQE is

surely needed to encourage higher achievement from the students. It is likely to be beneficial for students, otherwise they are wholly reliant on other academic or vocational achievements to distinguish themselves.

Recruitment of intending solicitors and qualified solicitors is based on an assessment of relevant academic and vocational achievements. There is a vital missing piece of the jigsaw if the SQE, which, under the proposals, is the single assessment of solicitor competence, lacks any grading and therefore any means of comparison between candidates.

Whilst under the present system, City firms recruit from university which will be before the SQE is completed, it will be a relevant recruitment factor post qualification. If the only option is pass or fail, any distinction between candidates will need to be made on prior academic achievements, which would be secondary and tertiary education. Above all else, this will do little for the social mobility and diversity benefits.

We do not believe that pass or fail will contribute to maintaining the standards of training courses at an appropriately high level. If there is no grading of achievement in the SQE, training providers merely have to get students to the pass mark.

As we understand it, the technical experts are of the opinion that it is feasible to grade results in a way that is valid and reliable.

Question 16

What information do you think it would it be helpful for us to publish about:

a. overall candidate performance on the SQE?

b. training provider performance?

We would not be in favour of publication of individual candidate performance but publication at a consolidated basis on overall candidate performance would presumably provide useful statistics on a comparative basis year on year.

It is difficult to see how useful training provider information would be in an unregulated training provider market where courses will not be comparable. The other possibility is that the publication of information will lead to artificial league tables.

Question 17

Do you foresee any additional EDI impacts, whether positive or negative, from our proposal to introduce the SQE?

While we can see that the SQE is intended to make it easier for people from a broader range of backgrounds to enter the profession, we feel it may actually have the reverse effect because:

- Part 1 and Part 2 will still need preparation which will be provided on a commercial basis. The preparatory courses are likely to be of varying quality and priced accordingly. Students who are funded or who are able to pay more will have access to better quality preparation.
- It is unrealistic to think that students with more challenging economic circumstances will be able to sit the tests a number of times. Again this route will only be available for those who are able to pay.

- Ability to meet the technical standards to become a solicitor is only one part of what law firms are considering when they are looking for solicitors at the entry level. These other requirements will not change whichever system of testing of technical ability is in place. In fact these other requirements may be given more weighting in the recruitment process if firms do not have the comfort of having some control over the technical development of those at the entry level. This is likely to serve intending solicitors from a more affluent background.

We believe that there are social and commercial benefits to opening up the profession to people from a more diverse range of backgrounds. We also believe that it is vital that the standards of the legal profession are maintained and those entering into it should have fair access to the same quality of legal training regardless of their background.

It would be misleading to students to give the impression that a graduate education is not essential for some legal career options and unfair to expect them to make career choices at such an early stage. As member firms have indicated to us, they are likely, in the main, to continue to recruit trainees who are graduates because they consider that degree performance, rather than the SQE, will provide the necessary assurances of a high level of academic skills. They also believe that their clients expect their legal advisers to be graduates. As City firms are by far the largest recruiters of intending solicitors, this could lead to a greater chance of a two tier profession and therefore do little to improve diversity and social mobility in the profession. It is likely that many of the measures that City firms are already putting in place under the current system will be more effective in terms of improving diversity and social mobility, and yet there seems to have been no acknowledgement by the SRA in the Consultation of any of these measures.

There appears to be very little credence given in any quarter that a centralised assessment will create a level playing field and will help to break down social and diversity barriers. AlphaPlus itself says that the proposed assessments themselves are unlikely to support or hinder increased diversity and access of any particular groups. The economic impact report suggests that the case for diversity advantages is as yet unproven.

Question 18

Do you have any comments on these transitional arrangements?

It is, in many ways, difficult to comment on transitional arrangements from the current qualification framework to a new framework at a time when that new framework has not yet been fully developed and is not in a form which we are able to support. However, we believe that a number of aspects of the transitional arrangements are potentially detrimental to individuals and firms and require further discussion.

Our main concern stems from the fact that our member firms currently recruit trainee solicitors, in the main, approximately two to three years before the start of their training contracts. As a result, they are currently recruiting trainee solicitors to start in the autumn of 2018 or the spring of 2019. By the end of 2016, those firms will have made arrangements for those future trainee solicitors (funded by the firms) to take the GDL (if applicable) and the LPC prior to starting their training contracts, and the future trainee solicitors will also be making their own plans based on those arrangements. There will be a further round of recruitment in 2017 for trainee solicitors to start in the autumn of 2019 or the spring of 2020.

Accordingly, irrespective of when any new framework came into effect, there would at that time be several thousand individuals who had previously accepted offers of training contracts under the existing qualification framework.

The current proposed transitional arrangements (as described in paragraph 95 of the Consultation) distinguish between:

(a) those who are in the process of studying for a QLD/GDL – who would only get credit for the Part 1 elements that are included in the QLD/GDL and who would need to both (i) enrol on further courses just to cover those sections of Part 1 of the SQE which are not covered in a QLD/GDL and (ii) take Part 2 of the SQE; and

(b) those who are in the process of studying for the LPC or undertaking a training contract – who would have the option of continuing under the existing qualification framework.

We believe that the option of continuing under the existing qualification framework needs to be given to all those individuals who have, at the time of the introduction of the new regulations, accepted offers of training contracts under that framework – irrespective of what stage they have reached at that time.

The offer and acceptance of a training contract is a significant long-term commitment between an individual and a firm. By applying the new qualification framework to individuals who had already accepted these offers, the SRA would be interfering with those long-term commitments and adding unnecessary cost and uncertainty to the recruitment and qualification process for all parties involved (both individuals and firms).

It is worth bearing in mind that the individuals affected would be those who, through no fault of their own, were applying to enter the profession at the same time as the new framework is introduced so that they have no clear idea of how it might affect them.

We believe that it is appropriate that individuals who accept a training contract offer should know that, if they accept an offer, they will be able to qualify under the existing framework without this being frustrated by the SRA. If, instead, there is significant uncertainty around this then it is likely to affect individuals' willingness to accept offers from firms, and a large number of potential solicitors may be lost to the profession as a result.

Given that the vast majority of our member firms do not currently utilise the legal apprenticeship or equivalent means routes to qualification, we have no comments on the proposed transitional arrangements for those routes (as described in paragraphs 96 and 97 of the Consultation).

We also have no comments regarding the proposed transitional arrangements in relation to the QLTS (as described in paragraph 98 of the Consultation).

Question 19

What challenges do you foresee in having a cut-off date of 2025/26?

On the basis that the proposals set out in our responses to questions 18 and 20 are accepted, we believe that having a cut-off date for qualification under the existing framework that is in the region of 7 to 8 years after the introduction of the new framework would, in principle, be workable for trainee solicitors taking the full-time graduate route. It might not be workable for those taking a part-time route or those on CILEx or trailblazer apprenticeship courses.

Question 20

Do you consider that this development timetable is feasible?

The proposed development timetable (set out in paragraph 105 of the Consultation) focuses only on those aspects of the process that are being led by the SRA. It does not take into account the ability of stakeholders (eg universities, training providers and firms themselves) to get themselves in a position to be ready for the introduction of the new qualification framework.

Given the current situation, where neither the full extent of the proposed new qualification framework nor the detail of its implementation has been provided by the SRA, we are not confident that those aspects of the process that are being led by the SRA can be completed by 2018.

We also believe that the nature and extent of the changes that would be required in connection with any new qualification framework (not just the SQE, but potentially also workplace assessment) mean that it would not be feasible for the SRA to impose an "impact day" when the new regulations take effect without a huge amount of additional work first having been undertaken by stakeholders to be ready for this. The way in which information is being drip fed to stakeholders currently makes this work difficult, if not impossible, to undertake.

Taking both this and the significant substantive concerns expressed elsewhere in this response into account, we therefore believe it would be unrealistic for the SRA to press ahead with the proposed development timetable.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY TRAINING COMMITTEE

THE CITY OF LONDON LAW SOCIETY
TRAINING COMMITTEE

Individuals and firms represented on this Committee are as follows:

Caroline Pearce (Cleary Gottlieb Steen & Hamilton LLP) (Chair)
Rita Dev (Allen & Overy LLP)
Lindsay Gerrand (DLA Piper LLP)
Ruth Grant (Hogan Lovells International LLP)
Hannah Kozlova-Lindsay (Berwin Leighton Paisner)
Patrick McCann (Herbert Smith Freehills LLP)
Frances Moore (Slaughter and May)
Catherine Moss (Winckworth Sherwood LLP)
Ben Perry (Sullivan and Cromwell LLP)
Stephanie Tidball (Macfarlanes LLP)